

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SPRINT COMMUNICATIONS COMPANY L.P., AND LEVEL 3 COMMUNICATIONS, LLC	DOCKET NOS. SPU-02-11 SPU-02-13
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**FINAL DECISION AND ORDER**

(Issued June 6, 2003)

**SYNOPSIS<sup>1</sup>**

In this order, the Board denies two challenges to the actions of the North American Numbering Plan Administrator (NANPA). NANPA denied numbering resource requests submitted to it by Sprint Communications Company L.P. and Level 3 Communications, LLC, each of which proposed to use the requested numbers to provide Virtual NXX (VNXX) services. Operating pursuant to jurisdiction delegated to the states from the Federal Communications Commission, the Board finds that VNXX is not an authorized local service and the proposed use of telephone numbers would be inconsistent with applicable industry standards and guidelines.

The Board also finds that VNXX or similar services may be appropriate and useful if offered by alternative means and directs the parties to meet and discuss the availability of acceptable alternatives that use telephone numbers in a more efficient manner and that resolve outstanding intercarrier compensation issues.

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<sup>1</sup> The purpose of this synopsis is to provide readers a brief summary of the Board's decision. While the synopsis reflects the order, it shall not be considered to limit, define, amend, or otherwise affect in any manner the body of the order, the conclusions of law, the findings of fact, or the ordering clauses.

### **PROCEDURAL HISTORY**

On July 8, 2002, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a challenge to the North American Numbering Plan Administrator's (NANPA) denial of Sprint's request for numbering resources in Iowa. On July 17, 2002, Level 3 Communications, LLC (Level 3), filed a similar challenge with respect to NANPA's denial of Level 3's request for numbering resources in Iowa. In each case, NANPA denied the request for numbering resources because the carrier did not provide documentation establishing the carrier's authority to provide telecommunications services in the geographic area for which the numbers were requested. (Transcript p. 40, hereinafter "Tr. 40.")

On July 22, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) entered its appearance in response to Sprint's challenge and asked that the Board docket the Sprint petition and establish a procedural schedule.

On July 30, 2002, Consumer Advocate requested the Board docket Level 3's challenge and establish a procedural schedule.

On August 19, 2002, the Board issued an order docketing the petitions of Sprint (SPU-02-11) and Level 3 (SPU-02-13), consolidating the dockets for all purposes, and setting a procedural schedule.

On September 13, 2002, Qwest Corporation (Qwest) petitioned the Board to intervene in this docket. The Board issued an order granting Qwest's petition to intervene on September 24, 2002.

On October 10, 2002, Iowa Telecommunications Services, Inc. (Iowa Telecom), petitioned the Board to intervene. The petition was granted on October 21, 2002.

On December 18, 2002, the Iowa Telecommunications Association (ITA) petitioned the Board to intervene. The petition was granted by order issued January 3, 2003.

On January 28, 2003, KMC Telecom V, Inc. (KMC), petitioned the Board to intervene. The petition was granted at the start of the hearing on February 4, 2003. (Tr. 6.)

On February 4 through 6, 2003, the Board presided over the hearing in this docket. Pursuant to Board order, initial briefs were filed on March 4, 2003, and reply briefs on March 18, 2003.

### **JURISDICTION AND SCOPE OF PROCEEDING**

Sprint and Level 3 filed their petitions pursuant to Paragraph 98 of the FCC's "Report And Order And Further Notice Of Proposed Rulemaking" issued in CC Docket No. 99-200, 15 FCC Rcd 7574 (March 17, 2000). Sprint and Level 3 appear to rely on the following language from that paragraph to establish Board jurisdiction in this matter:

Carriers disputing the NANPA's decision to withhold initial numbering resources upon a finding of noncompliance may appeal the NANPA's decision to the appropriate state commission for resolution. We hereby delegate authority to state commissions to affirm or overturn the NANPA's decision to withhold initial numbering resources based on compliance with the above requirements.

Based on this language, Level 3 and Sprint have at various times during these proceedings argued that this docket should be conducted in the form of an appeal from the NANPA decisions and should be strictly limited to the issues as they would frame them. (See, e.g., Tr. 11-12, 14.) However, a review of the FCC's regulations delegating authority to state agencies to review NANPA actions<sup>2</sup> makes it clear the FCC has not limited the Board to appellate-style jurisdiction or otherwise limited the issues the Board may appropriately consider in reviewing NANPA's actions. Instead, the FCC regulations show that the FCC contemplated and allowed for a broad-ranging state agency review of the NANPA decision, the carrier's plans, and the alternatives available to the carrier. Specifically, 47 C.F.R. § 52.15(g)(3)(iv) provides as follows:

The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an OCN. The NANPA must notify the carrier in writing within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm or overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination of compliance with the reporting and numbering resource application requirements herein.

This FCC regulation provides the state agency will hear a "challenge," rather than an "appeal," from the NANPA decision to deny initial numbering resources and further

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<sup>2</sup> The FCC has plenary jurisdiction over the North American Numbering Plan and related telephone numbering issues in the United States. 47 U.S.C. § 251(e).

provides that the state agency will make its own "determination of compliance with the . . . application requirements herein." Thus, the FCC regulation does not limit the Board to appellate procedures or foreclose notice and hearing procedures such as those which the Board has used in this case.

Moreover, the FCC regulations expressly contemplate that the scope of the state agency inquiry may include consideration of the alternatives available to the carrier. 47 C.F.R. § 52.15(g)(4) provides that if a state agency determines that NANPA has correctly withheld numbering resources for a failure to comply with the FCC's application requirements, the state can still order that numbering resources should be issued. Specifically, the rule provides in relevant part as follows:

The state commission may affirm, or may overturn, the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has a verifiable need for numbering resources and has exhausted all other available remedies.

Thus, the Board properly allowed presentation of evidence in this proceeding regarding Sprint's and Level 3's proposed network architectures and the alternatives that may be available to them, in order to preserve the option of overturning NANPA's decision based on "verifiable need" and "exhaustion of all other available remedies."

This analysis also responds to the arguments raised by KMC in its initial brief, to the effect that the Board should have proceeded by general rule making, rather

than by contested case.<sup>3</sup> The Board has not improperly expanded the scope of this proceeding, as alleged by KMC. Instead, the Board has undertaken precisely the investigation that is required by the FCC regulations which delegated this subject matter to the Board to determine whether NANPA properly denied the requests for numbering resources and, if so, whether there are other available alternatives that should be pursued.

As a result, the first question the Board must consider is whether NANPA correctly denied telephone-numbering resources to Sprint and Level 3. If the answer to that question is in the affirmative, then the Board will consider whether the carriers have a verifiable need for numbering resources, have exhausted all other available remedies, and should still receive the telephone numbers.

## ISSUES

**Issue 1.      Acting pursuant to its delegated authority under 47 C.F.R. § 52.15(g)(4), should the Board affirm or reverse NANPA's decision to deny numbering resources to Sprint and Level 3 for use in providing Virtual NXX services?**

The initial issue concerns NANPA's decisions to deny numbering resources. Sprint and Level 3 state they want numbering resources to offer local-call connectivity to the Internet in rural Iowa exchanges. Sprint calls its product "Dial-IP" and likens it to standard foreign exchange service (FX). In fact, Sprint already offers this service in ten Iowa exchanges, having received ten NXX codes between October 2000 and

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<sup>3</sup> The Board notes that Level 3 also disagrees with KMC's argument; Level 3 says there is "no need to delve into a rulemaking-type proceeding at this point...." (Tr. 13.)

April 2001. (Sprint Appeal, p. 2, footnote 3.) Level 3 calls its product "Managed Modem" and likens it to direct-inward-dialing services (DID). FX and DID services are tariffed services offered by certificated local exchange carriers (LEC). Users of these services compensate the LECs that are involved for the special access arrangements provided by those LECs. Sprint and Level 3 are proposing to provide a service that is generically described as virtual NXX service (VNXX), which is not the same as FX or DID, is not tariffed, and does not compensate the LECs for the use of their networks. Moreover, the service is inefficient in terms of use of numbering resources.<sup>4</sup>

VNXX is a specialized form of telecommunications traffic. It involves calls from a customer in Exchange A to an Internet service provider (ISP) physically located in Exchange B. (Tr. 349-50.) (All of the calls are ISP-bound traffic, Tr. 98.) Typically, the calling party, in exchange A, is a customer of an incumbent local exchange carrier (ILEC) such as Qwest, while the ISP would be a customer of Level 3, Sprint, KMC, or some similar entity. Normally, such a call would be considered interexchange traffic, but the jurisdictional issues surrounding ISP calls are somewhat more complex. Thus, even Level 3 admitted this traffic is not local traffic, but instead is some sort of "hybrid." (Tr. 101.)

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<sup>4</sup> Sprint's service requires a new NXX code in each exchange but uses only a handful of the telephone numbers. Out of the 100,000 numbers it has received in Iowa, Sprint pooled 27,000 and used approximately 64 numbers, leaving almost 73,000 numbers stranded. (Tr. 323, 352.) The record establishes that VNXX services from any provider will use only a small fraction of the numbers assigned (5 or 10 per exchange, out of 1,000 or 10,000 assigned.) (Tr. 187, 291, 336.)

One major point of difference, at least for purposes of this docket, involves the manner in which Level 3, for example, assigns and uses telephone-numbering resources to provide VNXX. Level 3 proposes to obtain a block of 10,000 telephone numbers (a Central Office Code or an "NXX," in telephone terminology) that will be assigned for rating purposes to Exchange A but five or ten numbers of which will be assigned to the ISP in Exchange B. As a result, Qwest's switch would view the call to Level 3's ISP customer to be a local, or intraexchange, call and would transmit the call to the point of interconnection between Qwest and Level 3, which is likely to be in Exchange B. Level 3 would then carry the call to the ISP customer in Exchange B. This is expected to be all one-way traffic to the ISP. (Tr. 354.)

This VNXX call can be contrasted to a regular local exchange call from an ILEC customer to a customer of a competitive local exchange carrier (CLEC). When an ILEC customer in Exchange A calls a CLEC customer in the same exchange, the ILEC carries the call to the point of interconnection with the CLEC (in Exchange B in this example), and the CLEC carries the call back to Exchange A for termination to the CLEC customer located there. From the ILEC point of view, the calls are superficially similar; it has carried a call that appears to be intraexchange from its customer to the point of interconnection. However, there are critical differences between the two calls.

First, using an end-to-end analysis considering only the use of the public switched telephone network, the ILEC-CLEC call is truly intraexchange, but the VNXX call is interexchange. Intraexchange calls are normally considered to be



"local," while most interexchange calls are considered to be "long distance." This difference affects the intercarrier compensation arrangements applicable to the call; in Iowa, most local calls are exchanged on a bill-and-keep basis, while long distance calls would require the payment of access charges to the originating ILEC.

Another critical difference is in the efficient use of the network. In the ILEC-CLEC example, if the call volumes between the ILEC customers in Exchange A and the CLEC customers in the same exchange reach a certain level, both the ILEC and the CLEC will have an economic incentive to establish a new or additional point of interconnection in Exchange A, in order to save the costs of hauling calls to and from the point of interconnection in Exchange B. In the VNXX situation, however, Level 3 will never have an incentive to establish a point of interconnection in Exchange A, no matter what the traffic level, because Qwest would be doing all the hauling from A to B, for which Level 3 would pay nothing. (Tr. 123.) This ability to ride Qwest's network from one exchange to another for free makes VNXX particularly attractive to Level 3 and other similar entities.

This has been only a brief description of VNXX and its unusual features; other factors will be discussed in the following summary of the parties' evidence and arguments.

**Sprint.** Sprint asserts that its application for numbering resources met the FCC criteria to receive numbers from NANPA. The FCC's guidelines for a company to receive numbers can be generalized into three requirements. First, the company must provide to NANPA its company name, company headquarters address,

Operating Company Number (OCN), parent company's OCN(s), and the primary type of business for which the numbering resources will be used. Second, the company must demonstrate that it is authorized to provide service in the area for which the numbering resources are being requested. Finally, the company must show that it is capable of providing service within 60 days of the numbering resources activation date. (18 C.F.R. § 52.15(g)(1); 18 C.F.R. § 52.15(9)(2)(i) and (ii)). (Sprint Initial Brief, p. 3.)

NANPA denied Sprint's number request on May 8, 2002, stating that Sprint did not have a state certificate and, therefore, did not show it had authority to provide service in the territory for which it had requested numbers. (Tr. 324.)

Sprint argues that its "Dial-IP product is not a basic local service product and therefore, Sprint is not required to have a certificate to provide basic local service. Because Sprint is offering a service that is not local and not needing a local certificate it should logically follow that Sprint is 'authorized to provide service' in Iowa for Dial IP." (Sprint Initial Brief, p. 5.) In fact, Sprint does not offer local service in Iowa. (Tr. 485; Ex. 208.) While this docket was pending, Sprint filed a proposed tariff for residential local service in parts of Iowa, but Sprint's witness was unable to identify any customers who would be likely to take Sprint's stand-alone residential service, priced at \$41 per month, when Qwest offers the same service using the same facilities for less than \$13 per month. (Tr. 432-33.)

Sprint argues that nothing in the Industry Numbering Committee (INC) Central Office Code Assignment Guidelines requires a carrier to demonstrate authorization to

provide local service or that they must show an “approved certificate to provide local service” in order to receive NXXs. Sprint argues that the Central Office Code Assignment Guidelines contemplate NXX code uses other than basic local service. Sprint states that common sense knowledge of the industry supports the notion that companies other than those providing local service can and do receive numbers, such as companies providing cellular, PCS wireless, paging, payphone, and data services. (Sprint Reply Brief, p. 6.)

**Level 3.** Level 3 argues that the only issue in this case is whether Level 3 has provided evidence of authority to provide service. (Tr. 11-12.) All of the other issues raised by other parties are irrelevant to this core issue. (Level 3 Initial Brief, pp. 6-7.)

Level 3 disagrees with parties that rely on paragraph 99 of the FCC's March 31, 2000, "Report and Order" in Docket No. 99-200, hereinafter the "NRO Order," for the assertion that numbering resources are only permitted to be used for local exchange service. Paragraph 99 provides:

We do not intend to circumscribe any carrier's ability to obtain initial numbering resources in order to initiate service. This requirement of additional information from applicants for initial numbering resources is to prevent actual or potential abuses of the number allocation process. In fact, we expect the establishment of these requirements to make more numbering resources available to carriers lawfully authorized by state commissions to provide local services by preventing unauthorized carriers from unlawfully depleting numbering resources.

Level 3 maintains that paragraph 99 of the NRO Order does not support the argument that local service is a requirement for receiving numbering resources.

First, Paragraph 99 is a policy statement, not a legally binding obligation. Second,

while paragraphs 96-97 (of the NRO Order) were codified at 47 C.F.R. 52.15(g), paragraph 99 was never codified. Third, the last sentence of paragraph 99 must be taken in the context of the first sentence of the paragraph, which makes clear that no carrier's ability to obtain numbering resources is being foreclosed. Fourth, there is no universal definition of "local service." Finally, a better reading of the last sentence of paragraph 99 is that it is merely an accurate assessment of what the outcome will be if the tests of paragraph 96-97 are implemented: LECs will, in fact, have more numbering resources available for traditional LEC service. (Level 3 Initial Brief, pp. 9-10; Tr. 75-76.)

According to Level 3, the fact that the Board did not issue Level 3 a certificate should not have been interpreted by NANPA to mean Level 3 lacked authority to provide service, because there is nothing about the Board's denial of Level 3's application for a CLEC certificate that called into question Level 3's authority to provide its service. The Board deregulates various services, products, and even carriers from time to time, and no one claims that there is no "authority" to provide such services or for such carriers to operate. (Level 3 Initial Brief, pp. 10-11.)

Level 3 maintains that blocking its ability to operate its national network and provide service for national Internet service providers in Iowa in the same manner it operates in 47 other states would unlawfully impair interstate commerce, citing Kassel v. Consolidated Freightways, 450 U.S. 662 (1981). Level 3 argues that, like the law overturned in Kassel, upholding NANPA's denial of initial numbering resources would create an unlawful burden on interstate commerce by forcing

Level 3 to change the way it engineers its network and operates its service when Level 3 reaches the Iowa border. (Level 3 Initial Brief, p. 18.)

**KMC.** KMC states that NANPA wrongfully found that Sprint and Level 3 lack the necessary authority to offer service in the areas for which they seek numbering resources. KMC stated that this issue of authority should have been the discrete issue of the Board's inquiry. (KMC Initial Brief, p. 2.)

**Consumer Advocate.** Consumer Advocate pointed out that a simple reversal of NANPA's decision to deny numbering resources to Sprint and Level 3 would open the door to similar entrants in the market niche for local dial-up connectivity to ISPs. These entrants would presumably try to compete not only with incumbent carriers but with each other to provide local dial-up access to the Internet. The more successful the new entrants might be in their ISP niche market, the greater the threat to numbering optimization goals. (Tr. 608.) Ultimately, numbers allocated to this market niche could overwhelm Iowa's numbering resources and lead to area code exhaust. (Tr. 606-7; Consumer Advocate Initial Brief, pp. 6, 13-14.)

Consumer Advocate stated that rather than an outright prohibition of VNXX, the Board could permit data local exchange carriers (DLECs) to obtain numbering resources for VNXX-based ISP-bound traffic under certain conditions. However, those conditions are not yet defined in this record. (Consumer Advocate Initial Brief, p. 14)

**Iowa Telecom.** Iowa Telecom's witness testified that whether numbers are issued to Sprint and Level 3 is not a major concern for Iowa Telecom. (Tr. 1011.)

Iowa Telecom stated it is supportive of the Board's concern and efforts involving number conservation, but its prime interest is the appropriate utilization of its own resources. Iowa Telecom is interested in the appropriate compensation for and utilization of its facilities and services that it is called upon to provide in response to the proposed business plans of Sprint and Level 3. Iowa Telecom stated these issues arise in the context of both the application of local number portability (LNP), number conservation solutions, and in the implementation of the concept of VNXX. Iowa Telecom did not comment further on the appeal of the NANPA decision. (Iowa Telecom Initial Brief, pp. 1-2.)

**Qwest.** Qwest argued that Level 3's and Sprint's requests for numbering resources should be denied. Both Level 3 and Sprint applied to the Board for a Certificate of Public Convenience and Necessity (CPCN) and were correctly denied certification by the Board. Absent a Board CPCN, NANPA refused to allocate numbering resources to either Level 3 or Sprint. Neither Level 3 nor Sprint appealed the Board's denial of the CPCN. (Qwest Initial Brief, p. 10-11.)

Level 3 and Sprint cannot receive a CPCN in Iowa unless they intend to offer local service. Iowa Code § 476.96(5) defines local exchange carriers as "any person that was the incumbent and historical rate regulated wireline provider of local exchange services . . . that provides local exchange services under an authorized [CPCN] within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992." LEC obligations are also addressed in Iowa Code § 476.101(1), which requires that CLECs obtain a CPCN pursuant to section

476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information and pay assessments, and be subject to the Board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. Section 476.29(4) requires that "each certificate shall define the service territory in which land-line local telephone service will be provided." Section 476.29(5) states that "[e]ach local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from this requirement by the board." Qwest stated that neither Level 3 nor Sprint can explain how their proposals fit within the LEC requirements spelled out by the Iowa legislature. Both Level 3 and Sprint conceded that the traffic exchanged in this proceeding occurs between exchanges or in common parlance is interexchange in nature. (Qwest Initial Brief, pp. 11-12.)

Qwest also argued that the Board's authority in review of NANPA determinations is limited to affirming or overturning the NANPA's decision to withhold numbering resources based upon compliance with FCC requirements. Qwest stated that the FCC's requirements are those appearing at paragraphs 94 through 97 of the NRO Order. Qwest cites specifically to these portions of paragraphs 96 and 97 from that FCC order:

96. . . . Thus, a carrier shall not receive numbering resources if it does not have the appropriate facilities in place or is unable to demonstrate that it will have them in place to provide service . . . we require applications for initial numbering resources to include documented proof that (1) the applicant is authorized to provide service in the area for which the numbering resources are requested and (2) the applicant

is or will be capable of providing service within 60 days of the numbering resources activation date.

97. . . . Specifically, carriers must provide, as part of their applications for initial numbering resources, evidence (e.g. state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource. Carriers requesting initial numbering resources must also provide the NANPA appropriate evidence (e.g. contracts for unbundled network elements, network information showing that equipment has been purchased and is operational or will be operational, business plans, or interconnection agreements) that its facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date. . . . These requirements apply equally to carriers requesting an initial NXX code and those requesting an initial thousands-block pursuant to the pooling requirements we establish in this *Report and Order*.<sup>5</sup>

(Quoted in the Qwest Initial Brief, p. 14.)

Qwest asserted that Level 3 has departed from its prior advocacy and now suggests that Board certification and authorization is not a prerequisite to NANPA allocations of numbering resources.<sup>6</sup> Qwest stated that this argument ignores the FCC's NRO Order, which specifies such authorization as a principal requirement for obtaining resources from NANPA.<sup>7</sup> Qwest stated that the Industry Numbering Committee (INC) guidelines are industry-promulgated standards serving as "guiding principles" (assuming they are in conformity with FCC rules and other legal mandates) for NANPA. Further, Qwest argued that Level 3 has misinterpreted INC § 4.2.1, which applies to wireless carriers that do not receive state CPCNs. Qwest

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<sup>5</sup> These requirements also appear at 47 C.F.R. 52.15(g)(2)(i) and (ii).

<sup>6</sup> Level 3 Initial Brief at 12-13 (citing INC Guidelines § 4.2.1)

<sup>7</sup> NRO at ¶¶ 96-97.



states that its position is consistent with the NRO and the FCC should resolve any inconsistency between the INC Guidelines and the NRO, not the Board. (Qwest Reply Brief, p. 10)

**Discussion:**

The Board will affirm NANPA's decision to deny the requests for blocks of 10,000 numbers to provide VNXX services. Sprint and Level 3 have not shown that they are authorized to provide the proposed services in the areas for which they are seeking telephone numbers; more specifically, they have not shown that their proposed VNXX service is an authorized service in Iowa.

47 C.F.R. § 52.15(g), "Applications for Numbering Resources," provides as follows:

(1) General requirements:

All applications for numbering resources must include the company name, company headquarters address, OCN, parent company's OCN(s), and the primary type of business in which the numbering resources will be used.

(2) Initial numbering resources. Applications for initial numbering resources shall include evidence that:

- (i) The applicant is authorized to provide service in the area for which the numbering resources are being requested; and
- (ii) The applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date.

Sprint and Level 3 agree that, regarding their respective applications for numbering resources, the only criterion at issue is whether the companies have the authority to provide service in Iowa. (Sprint Initial Brief, p. 2; Level 3 Initial Brief, p. 6.)

Sprint and Level 3 both applied to the Board for a CPCN. Both companies were denied a certificate by the Board because the tariffs they filed did not include a local service offering. (Tr. 40, 98-101, 324.) Sprint's logic is that since its offering is not deemed local and does not need a local certificate, it follows that Sprint is authorized to provide service in Iowa for Dial IP. (Sprint Initial Brief, p. 5.) Level 3 states that since the Board rejected its tariff, it is evident that the service Level 3 intends to provide is lawfully permitted in Iowa with or without a CLEC certificate. (Level 3 Initial Brief, p. 11.)

However, these conclusions do not necessarily follow from the FCC's regulations and the language of the relevant FCC orders. In paragraph 99 of the NRO Order, the FCC writes:

We do not intend to circumscribe any carrier's ability to obtain initial numbering resources in order to initiate service. This requirement of additional information from applicants for initial numbering resources is to prevent actual or potential abuses of the number allocation process. In fact, we expect the establishment of these requirements to make more numbering resources available to carriers lawfully authorized by state commissions to provide local service by preventing unauthorized carriers from unlawfully depleting numbering resources.<sup>8</sup>

The FCC's intent is clear. Numbering resources are to be used by carriers that will provide authorized local service and the rules and requirements governing the assignment of numbering resources are in place to exclude carriers that do not meet the requirements. Level 3 argues that paragraph 99 is merely a policy statement and

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<sup>8</sup> Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99-200, paragraph 99.

carries no weight because it was not codified in the FCC's rules. (Level 3 Initial Brief, p.10.) The Board disagrees; this language is part of the FCC's NRO Order and is entitled to substantial weight in the Board's deliberations, which are being conducted pursuant to delegated authority from the FCC.

Sprint and Level 3 were denied CPCNs by the Board because they did not propose to provide a local exchange service offering. Contrary to their arguments, the Board's denial does not mean that they should then be able to obtain local telephone numbers to provide a non-local service; in fact, local numbers are not supposed to be used for such purposes.

NANPA is required to consider and comply with various criteria in making its decisions, including the guidelines published by the Industry Numbering Committee (INC). Specifically, 47 C.F.R. § 52.13(b)(3) states that in administering the North American Numbering Plan, NANPA is to consider whether its decisions are

Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and orders, and the guidelines of other appropriate policy-making authorities, all of which may be modified by industry fora or other appropriate authority.

The INC Central Office Code (NXX) Assignment Guidelines proceed from the assumption that wireline local telephone numbers will be used in the exchange to which they are assigned. Section 2.14 of the Assignment Guidelines states:

It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO

codes/blocks are assigned. Exceptions exist, for example  
tariffed services such as foreign exchange service.

(Tr. 740; Ex. 201.) VNXX service does not meet this guideline, nor is it a tariffed service. As presented in this docket, VNXX service uses a NXX code assigned to a specific rate center to reach customers physically located in some other rate center in the same LATA, depending on where the provider chooses to locate its point of interconnection. (Tr. 181.) The traffic is exchanged pursuant to the interconnection agreement between the carriers, according to the VNXX providers. (Tr. 24.) This configuration will produce irregularities in the routing database system and subsequently in the local exchange routing guide (LERG), as well as require the LEC to carry traffic between exchanges located anywhere in the LATA at compensation negotiated or arbitrated for local interconnection purposes.

Level 3 also contends that its FCC Section 214 authorization to provide interstate services is all the authorization it needs. (Level 3 Reply Brief, p.3.) Qwest disagrees with that argument. Qwest states that Level 3 is misguided in thinking a general interstate authority is sufficient to obtain numbers for local service. (Qwest Reply Brief, pp. 9-10.)

NANPA did not agree with Level 3's interpretation of the FCC's rules, nor does the Board. Again, as described above, VNXX services are not local exchange services, do not satisfy the applicable INC guidelines, and are, therefore, not entitled to local numbering resources.

The FCC's policy statement at Paragraph 99 of the NRO Order makes it clear that the FCC adopted its regulations in order to preserve numbers for carriers offering

authorized local services and that the FCC wanted to prevent unauthorized carriers from unlawfully depleting numbering resources. VNXX is not an authorized local service and therefore cannot be allowed to deplete numbering resources. The Board will affirm NANPA's decisions to deny numbering resources to Sprint and Level 3 for use in providing VNXX services in Iowa.<sup>9</sup>

**Issue 2. If the Board concludes that NANPA correctly withheld numbering resources, then pursuant to the last sentence of 47 C.F.R. § 51.15(g)(4), the Board may consider whether the record supports a permissible alternative means of providing the proposed service.**

**Discussion:**

The Board has found that VNXX is not an authorized local service and, therefore, is not entitled to local telephone numbering resources on the same basis as an authorized local service. However, this is not the end of the Board's inquiry. VNXX service, or some variation thereof, may be a useful and valuable service, if provided in a manner that does not unlawfully and unnecessarily deplete numbering resources and does not make use of facilities belonging to other carriers without paying appropriate compensation. The Board is very interested in finding an alternative means of providing competitive Internet access in all parts of Iowa,

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<sup>9</sup> The Board acknowledges Level 3's argument based on Kassel v. Consolidated Freightways, 450 U.S. 662, 101 S.Ct. 1309, 67 L.Ed.2d 580 (1981), but finds the argument unpersuasive. The Kassel Court found that state regulations limiting vehicle length were an unconstitutional burden on interstate commerce because the evidence showed that the larger vehicles were just as safe as the shorter alternatives, while the interference with interstate commerce was substantial. (450 U.S. at 671.) In this case, Level 3 has offered no evidence to counter the public interest in efficient use of telephone numbers (discussed in greater detail below); Level 3 has not shown that interstate commerce is burdened at all by the Board's decision; and, in the end, the Board's decision is the result of a federal regulation (47 C.F.R. § 52.13(b)(3), requiring that NANPA consider whether its decisions are consistent with INC guidelines, which prohibit assignment of local telephone numbers to one rate center for rating purposes and to a customer physically located in another rate center for call completion purposes).

specifically an alternative that conserves numbers and provides reasonable compensation to all carriers involved. A description of some of the potential problems may illuminate the issues.

VNXX, as proposed by Level 3, Sprint, and KMC in this docket, is very wasteful of telephone numbering resources. For each new exchange, the VNXX entity must have a separate set of 10,000 telephone numbers (1,000 in exchanges with thousands-block number pooling, or TBNP, which in Iowa is basically limited to the exchanges served by Qwest), even though the VNXX entity will use only five or ten of those numbers. (Tr. 187, 291, 336.) This is not the fault of the VNXX entity; it is a requirement of the current design of the public switched telephone network. Still the consequences are the same, regardless of the cause: VNXX would be a very inefficient use of telephone numbers.

For example, Level 3 says it would like to provide service in every Qwest exchange and in some Frontier exchanges in Iowa. (Tr. 165-66.) Qwest serves 105 exchanges in Iowa, while Frontier serves 38, for a total of 143. If Level 3 were to enter 125 of those exchanges, and if 110 of them are TBNP-capable, then Level 3 would tie up 260,000 telephone numbers while using fewer than 1,250, a utilization rate of less than 0.5 percent. Further, it is likely that Sprint, KMC, and other VNXX entities would want to enter many of the same exchanges to provide competitive services, such that millions of telephone numbers would be tied up so that only a few thousand could be used. This situation would, obviously, be even worse to the

extent that VNXX services were to be offered in more of Iowa's 800-plus exchanges. (Tr. 304.)

This waste could have dire consequences for Iowans. Currently, NANPA projects relatively long lives for each of Iowa's five Numbering Plan Areas, or NPAs. (Tr. 443.) However, it is the nature of such forecasts that they are sometimes wrong. (Tr. 605.) Moreover, both Level 3 and Sprint agreed that an increase in a single carrier's demand for telephone numbers could dramatically shorten NANPA's projected lives for these area codes. (Tr. 307, 523.) The effect of widespread VNXX offerings by multiple carriers would be even more dramatic. It is not unreasonable to project that widespread VNXX demand would force one or more of Iowa's NPAs into jeopardy status, requiring another round of area code relief proceedings, with all their attendant difficulties and expense. (Tr. 591.) It would not be in the public interest to force that result on Iowans in order to provide VNXX services that utilize less than 0.5 percent of the numbers assigned. A better alternative must be found.<sup>10</sup>

While the Board is concerned about efficient use of numbering resources (and Level 3 agrees that the Board's concern is legitimate, Tr. 173-75), the Board and the industry are both concerned about compensation issues associated with VNXX. (Tr. 727.) As a result, many state public utility commissions are considering, or have

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<sup>10</sup> Level 3 suggests that this problem should be addressed through TBNP and rate center consolidation. (Tr. 91.) The Board requested the authority from the FCC to implement TBNP on its own motion, but that request was not granted. Meanwhile, even Level 3 admits that rate center consolidation in Iowa "poses many unique issues." (Tr. 185.) These include the number of independent local exchange carriers in Iowa and the fact that Iowa has over 800 rate centers with interlocking Extended Area Service (EAS) calling areas. (Id.; Tr. 304.) As a result, rate center consolidation is a very time- and resource-consuming process that requires a level of industry cooperation that has not been forthcoming. (Tr. 680.) Even if that cooperation were available, it is not clear that rate center consolidation is justifiable on a cost-benefit basis. (Tr. 681.)

recently considered, VNXX disputes that included or centered on compensation issues. (*Id.*) These include New Hampshire,<sup>11</sup> Massachusetts,<sup>12</sup> Washington,<sup>13</sup> Pennsylvania,<sup>14</sup> Colorado,<sup>15</sup> Maine,<sup>16</sup> Wisconsin,<sup>17</sup> Ohio,<sup>18</sup> New York,<sup>19</sup> Idaho,<sup>20</sup> Oregon,<sup>21</sup> and Utah.<sup>22</sup> (Tr. 195-97, 591-92, 617, 647-48, 784-85.) The Board will not describe all of the compensation issues in this order in any detail, but this widespread interest in the matter makes it reasonably clear that VNXX, as proposed in this docket, is not the final answer. If VNXX-type services are to be offered in Iowa, an alternative must be found and it would be preferable to identify that alternative in advance. (Tr. 605, 637, 728.)

However, this record is not sufficiently developed to permit selection of an alternative. Sprint is to be commended for offering one possible alternative (Tr. 342-45, 408), but that proposal continued to develop throughout the hearing (Tr. 500-12, 684) and still has substantial issues to be resolved. (Tr. 162-64, 370-81,

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<sup>11</sup> New Hampshire Public Utilities Commission Dockets DT 00-223 and DT 00-054, *Investigation Into Whether Certain Calls Are Local*, Final Order, Order No. 24, 080 (October 28, 2002).

<sup>12</sup> Massachusetts Department of Transportation and Energy, D.T.E. 02-45, IN the Matter of Global NAPS, Inc., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 (filed July 30, 2002).

<sup>13</sup> Referred to at Tr. 195, no docket identification provided.

<sup>14</sup> Referred to at Tr. 195, no docket identification provided.

<sup>15</sup> Level 3 arbitration with Century Tel, no docket identification provided. (Tr. 195.)

<sup>16</sup> Maine Public Utility Commission Docket No. 98-758, *Investigation Into Use Of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC, d/b/a Brooks Fiber*, June 30, 2002.

<sup>17</sup> Level 3 arbitration with Century Tel, no docket identification provided. (Tr. 196.)

<sup>18</sup> Referred to at Tr. 197, no docket identification provided.

<sup>19</sup> New York Public Service Commission Case 02-C-006, Petition of Global NAPS, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Verizon New York Inc., *Order Resolving Arbitration Issues*, May 24, 2002.

<sup>20</sup> Idaho Public Utilities Commission Case No. GNR-T-02-16, In the Matter of the Petition of Potlatch Telephone Company; Centurytel of Idaho, Centurytel of the Gem State, and the Idaho Telephone Association, *Petition for Declaratory Order Regarding the Use of Virtual NPA/NXX Calling Patterns*, filed August 2002.

<sup>21</sup> Referred to at Tr. 784-85, no docket identification provided.

<sup>22</sup> Referred to at Tr. 785, no docket identification provided.



614.) Other alternatives in the record also have issues. (Tr. 67-71, 89, 177-78, 216, 447-65.)

Instead of picking an alternative on the basis of this inadequate record, the Board will leave this docket open to allow the parties an opportunity for managed negotiation. Specifically, the Board will give the parties nine months from the date of this order to try to negotiate an alternative means of providing the proposed service, one that uses numbers efficiently and also resolves intercarrier compensation issues. The parties will be required to file a report every three months describing the meetings they have held, identifying the participants, and describing the issues discussed and the progress they have made. If, at the end of the nine-month period, the parties have not arrived at an acceptable alternative, the Board will consider re-opening this docket (or another docket) for further action. That action may include adoption of one of the alternatives already proposed in this docket (for example, the Sprint alternative or discounted PRI service) or it may involve consideration of entirely new alternatives.

In order to ensure that the parties share the responsibility for advancing these negotiations, the Board will direct Qwest to arrange the first meeting or discussion and to file the first report. After the first meeting, the hosting responsibility should rotate among the parties, unless all of the parties agree otherwise.

The Board is aware that at least one of the parties, Level 3, believes that this Board order can only be appealed to the FCC. (Tr. 111, 205.) Because many of the issues presented by VNXX and similar services involve many states, it may be

appropriate for the FCC to consider some or all of the issues that the Board has decided today. However, even if one or more parties choose to take this matter to the FCC, the Board encourages, and expects, that the negotiations described above will go forward.

In order to assist the parties in their negotiations, the Board will make its administrative law judge available as a referee to offer a quick, non-binding advisory resolution of any issues on which the parties reach an impasse. Those advisory resolutions can then be appealed to the Board for an expedited decision, which will be in the nature of a declaratory order issued pursuant to Iowa Code § 17A.9 (2003).

The final issue the Board must address today involves the telephone numbers that have already been assigned to Sprint and that are being used to provide VNXX services. (Tr. 323, 398-99.) Consistent with the Board's decision on Issue No. 1, the Board will ultimately direct that NANPA reclaim those numbers. However, in order to prevent unnecessary disruption of the Internet service currently being provided to Iowans by means of those numbers, the Board will allow Sprint to keep the numbers on an interim basis while negotiations are underway and while Sprint transitions to whatever alternative system is finally implemented, if that transition will occur in a timely manner.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction of this matter pursuant to 47 U.S.C. § 251(e), 47 C.F.R. § 52.15, and Iowa Code §§ 476.1, 476.15, and 476.101 (2002).

2. In administering the North American Numbering Plan, NANPA is required to consider whether its decisions are in compliance with the guidelines of the Industry Numbering Committee. 47 C.F.R. § 52.13(b)(3).

3. Industry Numbering Committee Assignment Guideline 2.14 provides as follows:

It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned. Exceptions exist, for example tariffed services such as foreign exchange service.

### **FINDINGS OF FACT**

1. As the term is used in this docket, VNXX service enables a customer to be assigned a telephone number in a local calling area in which the customer does not maintain a physical presence. (Tr. 138-39, 245-47, 349-50, 495, 598-99, 745.)

2. Telephone numbers that are used for VNXX service are not being utilized to provide service to a customer premise physically located in the same rate center as the central office to which the telephone numbers are assigned. (Tr. 245-47, 349-50, 495, 598-99.)

3. VNXX service is not a tariffed service in Iowa.

4. VNXX service is not an authorized use of local telephone numbers in Iowa.

5. In their applications for telephone numbering resources submitted to NANPA, Sprint and Level 3 did not demonstrate that they were authorized to provide

their proposed services in the geographic areas for which the numbers were being requested. (Tr. 40, 324.)

6. NANPA's decisions to withhold telephone-numbering resources from Sprint and Level 3 should be affirmed.

7. The record in this proceeding does not support a determination that Sprint and Level 3 have a verifiable need for numbering resources and have exhausted all available remedies. (Tr. 67-71, 89, 162-64, 177-78, 216, 342-45, 370-81, 408, 447-65, 500-12, 614, 684.)

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The challenge to the North American Numbering Plan Administrator's denial of numbering resources filed on July 8, 2002, by Sprint Communications Company L.P., and identified as Docket No. SPU-02-11, is denied.

2. The challenge to the North American Numbering Plan Administrator's denial of numbering resources filed on July 17, 2002, by Level 3 Communications, LLC (Level 3), and identified as Docket No. SPU-02-13, is denied.

3. The parties are directed to commence negotiations to develop an alternative means of providing VNXX-type services, as described in the body of this order.

4. Until further order of the Board, Sprint will be permitted to retain and use the central office codes it is currently using to provide VNXX services in Iowa.

**UTILITIES BOARD**

ATTEST:

\_\_\_\_\_  
Executive Secretary

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of June, 2003.